

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ASRAF ROBINSON, #2229990,

§

Plaintiff,

§

v.

§

Civil Action No. **3:19-CV-2805-L-BH**

MARIAN BROWN, et al.,*

§

Defendants.

§

ORDER

On July 6, 2020, the Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) (Doc. 10) was entered, recommending that the court dismiss without prejudice this action for failure to prosecute or comply with a court order under Federal Rule of Civil Procedure 41(b) as a result of Plaintiff’s failure to file his complaint on the proper form and either pay the requisite filing fee or file a motion to proceed *in forma pauperis* within thirty days as directed. Although filed as a habeas action, the Report indicates that Plaintiff’s pleadings were liberally construed as a civil rights action arising under 42 U.S.C. § 1983 because they do not challenge a conviction or Plaintiff’s custody. They, instead, allege that Plaintiff was assaulted while in custody and received inadequate medical care. No objections to the Report were received as of the date of this order.

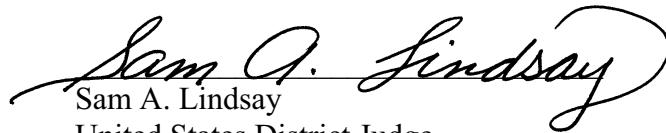
Having reviewed the pleadings, file, record in this case, and Report, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the

* Plaintiff’s pleadings indicate that the action is brought against “Marian Brown, et all [sic],” although Marian Brown is the only defendant identified. Doc. 1.

court. Accordingly, the court **dismisses without prejudice** this action under Rule 41(b) for failure to prosecute or comply with a court order.

The court prospectively **certifies** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). In support of this certification, the court **accepts and incorporates** by reference the Report. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). The court concludes that any appeal of this action would present no legal point of arguable merit and would therefore be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the clerk of the United States Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; Fed. R. App. P. 24(a)(5).

It is so ordered this 25th day of August, 2020.



Sam A. Lindsay
United States District Judge